

APPLICANT:
Craig Mazzatenta

REQUEST: A variance to permit a
sunroom within the required rear yard
setback in the R2 District

HEARING DATE: August 27, 2007

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5611

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Craig Mazzatenta

LOCATION: 3406 Philadelphia Road, Abingdon
Tax Map: 62 / Grid: 3B / Parcel: 862 / Lot: 57
First (1st) Election District

ZONING: R2 / Urban Residential District

REQUEST: A variance, pursuant to Section 267-36(B), Table VI, of the Harford County Code, to permit a sunroom within the required 35 foot rear yard setback (31 feet proposed) in the R2 District with NRD adjustment.

TESTIMONY AND EVIDENCE OF RECORD:

The Applicant, Craig Mazzatenta, described his property as an approximately one-third acre lot located on, and fronting, MD Route 7 in Abingdon. The parcel is improved by a two-story newly constructed home and an attached two-car garage. Mr. Mazzatenta purchased the property in early 2006.

The house is also improved by an existing deck to the rear of the home which has approximate measurements of 12 feet by 16 feet. The deck is attached to the home at the location of the sliding glass door. The deck itself extends into the required 35 foot rear yard setback by approximately 4 feet.

Mr. Mazzatenta wishes to improve the deck by the construction of a 12 foot by 10 foot sunroom. However, in order to do so, as the sunroom would be encroaching 4 feet into the rear yard setback, a variance is required.

Mr. Mazzatenta explained that the property is required to observe a 60 foot front yard setback from MD Route 7. Originally, the lot was improved by a house which was non-conforming in that it was located within the 60 foot front yard setback. After the subdivision of the surrounding lands that house was demolished and Mr. Mazzatenta's present residence was constructed.

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Mr. Mazzatenta explained that the noise generated by MD Route 7 is oppressive. Traffic noise is loud and continuous. Enclosing part of his deck with a sunroom will help eliminate the impact of traffic noise.

The Applicant explained that his homeowners association has given approval for the improvement. He has not spoken to his neighbors.

Next for Mr. Mazzatenta testified Gerald Anderson of Appleby Systems. Appleby Systems will be installing the sunroom on the Applicant's property if the approval is granted. Mr. Anderson explained that the required rear yard setback is 35 feet, with the proposed sunroom to impact that setback by 4 feet. While, according to Mr. Anderson, the side yards of the property are sufficiently wide to allow the construction of the proposed sunroom without the variance, it would be impractical to locate a sunroom in either of those locations because of the interior configuration of the home. The only practical place for such a sunroom is to the rear of the home, at the location of the sliding glass door, as proposed.

The room itself will be a four season room. The roof will be aluminum panels covered with shingles to match those of the existing home. The finish of the sunroom will match that of the existing home as well.

Next testified Anthony McClune for the Harford County Department of Planning and Zoning. Mr. McClune explained that the subject parcel was originally improved by two dwellings. When the surrounding property was planned for development it was anticipated that one of the dwellings on the subject parcel would remain. That older dwelling was non-conforming and was located within the 60 foot front yard setback. Because of its location, the Department of Planning and Zoning felt that its lot had sufficient depth to provide for future normal improvement and use.

However, Mr. McClune explained, the developer/owner realized soon after the subdivision of the property that the dwelling would have to be removed. A new home was then constructed, which is the home now occupied by Mr. Mazzatenta. As it had to comply with front yard setback requirements the new house was setback 60 feet from MD Route 7 which, as a result, resulted in little area within its rear yard. Mr. McClune explained that the Department of Planning and Zoning would have required the lot to have been deeper if it had realized the older home would not be retained.

Mr. McClune noted that other lots in the subdivision are deeper than the Mazzatenta lot, and would not require a variance for a similar use. Because of this reduced building envelope, Mr. McClune and the Department feel that the lot is unique.

Mr. McClune also observed that the back yard of the subject property slopes fairly precipitously downward to the property to the rear. This will help mitigate the impact of the sunroom on the properties which adjoin the subject property to its rear.

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Mr. McClune also noted that the adjoining lot to the right of the Applicant's property actually backs to MD Route 7, and has frontage on a cul-de-sac. This places the front entrance of the adjoining parcel at a location parallel to the rear of the Mazzatenta property. Mr. McClune, however, feels that because of the distance between the two properties the construction of the sunroom within the rear yard setback as requested by Mr. Mazzatenta will have no adverse impact on either that neighbor, or any other neighbor. Mr. McClune also stated that similar additions exist in the neighborhood. The one proposed by the Applicant is, accordingly, in keeping with the neighborhood.

The Staff Report states, inter alia:

"The Department finds that the subject property is unique. This lot was created around an existing dwelling which was originally intended to remain. The original dwelling was located within the 60 foot front setback line. That dwelling was removed and a new dwelling was located behind the 60 foot setback line. There is a significant change in elevation between the applicant's dwelling and the dwelling to the rear. This change in elevation helps to mitigate the reduced setback. The request will not have an adverse impact on the neighborhood or the intent of the code."

No testimony or evidence was given in opposition.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

"Variances.

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
 - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*

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- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicant, supported by the Department of Planning and Zoning, presented a convincing case that the subject property, because of its unique features, is impacted disproportionately by the operation of the Zoning Code. Specifically, the property originally supported a dwelling which was non-conforming, located within the 60 foot front yard setback. If that dwelling had remained, the requested improvement could have been constructed to the rear of the house without the requested variance.

However, for some unexplained reason the developer decided to remove that house and construct the dwelling in which Mr. Mazzatenta now lives. Adhering to the required 60 foot front yard setback places the house approximately 43 feet from the rear yard lot line. With a required 35 foot required setback, this obviously gives the Applicant very little space within which to construct any improvement without a variance.

The Applicant wishes to improve a portion of his existing deck with a sunroom. Such a construction will be beneficial to the owner of this property for, among other reasons, the Applicant is heavily impacted by the traffic noise generated by MD Route 7. If not for the removal of the non-conforming house and construction of the newer house, the variance would not be necessary. Mr. McClune explained that the Department of Planning and Zoning would not have approved such a lot, with such a shallow rear yard, if it realized that the existing home was going to be removed.

Accordingly, it is found that the Applicant's property exhibits an unusual feature in that it has a building envelope smaller than those of its neighbors, and smaller than would have normally been allowed in such a subdivision. This unusual feature causes the Applicant a hardship in that he is unable to construct a modest sized sunroom similar in construction and type to others in his neighborhood and within the County. No adverse harm has been identified and it is found that no adverse harm will result if the variance were granted. It is further found that a 4 foot variance is the minimum relief necessary to alleviate the hardship.

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CONCLUSION:

Accordingly, for the above reasons, it is recommended that the requested variance be granted subject to the Applicant obtaining all necessary permits and inspections for the construction of the sunroom.

Date: September 4, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on OCTOBER 4, 2007.